

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/24/2002

CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000390

FILED: _____

STATE OF ARIZONA

GERALD R GRANT

v.

RUBY JANE HERNANDEZ

DANNY L LOWRANCE

FINANCIAL SERVICES-CCC
PHX JUSTICE CT-WEST
REMAND DESK CR-CCC

MINUTE ENTRY

WEST PHOENIX JUSTICE COURT

Cit. No. 1778521

Charge: A. DUI
B. HAVING A B.A.C. ABOVE .10

DOB: 05/19/55

DOC: 02/06/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

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This matter has been under advisement since oral argument on April 24, 2002. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the West Phoenix Justice Court, and the Memoranda and arguments of counsel.

The only issue presented for review by this court is whether the trial judge erred on September 20, 2000 in denying Appellant's Motion to Dismiss based upon the alleged denial of Appellant's right to counsel after her ambiguous request to use the telephone to call an attorney. At the conclusion of an evidentiary hearing, the trial judge (the Honorable David H. Fletcher, Justice of the Peace Pro Tem) found:

The court finds Defendant made an ambiguous request for counsel which the officer failed to clarify. As a search warrant was obtained for the blood of Defendant, the court rules only the refusal of the Defendant to the test be suppressed. The blood test is not suppressed.¹

On appeal the State does not argue that the trial court erred in finding that Appellant had made an ambiguous request for counsel which the investigating officer ignored. The State argues that the appropriate suppression is suppression of all statements made by Appellant after her request for a telephone call, which was the remedy utilized by the trial judge. Appellant contends that the only appropriate remedy is dismissal of all of the charges. The precise issue was previously addressed by the Arizona Court of Appeals in State v. Keyonnie² where the Court of Appeals stated:

¹ Order of September 20, 2000, record on appeal from West Phoenix Justice Court.

² 181 Ariz. 485, 892 P.2d 205 (App. 1995).

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The State accurately articulates the law when it posits that only when police conduct interferes with both the Defendant's right to counsel and his ability to obtain exculpatory evidence is "(d) dismissal of the case with prejudice...the appropriate remedy because the State's action foreclosed a fair trial by preventing (the Defendant) from collecting exculpatory evidence no longer available." (citation omitted) Correspondingly, when the interference with the Defendant's right to counsel does not impinge upon his ability to collect exculpatory evidence, the appropriate remedy is suppression (emphasis added).³

The facts of this case are not disputed by counsel. Officer Ruble did not interfere with Appellant's ability to collect independent exculpatory evidence as the officer specifically informed Appellant of her rights to obtain an independent test.⁴ Additionally, a search warrant was obtained from a magistrate authorizing the taking of blood from the Appellant. The trial judge's ruling obviously found that Appellant was not prevented from collecting exculpatory evidence as the trial judge found that the blood test result would not be suppressed. This Court concurs with that conclusion and result.

IT IS THEREFORE ORDERED affirming the trial court's denial of Appellant's Motion to Dismiss.

IT IS FURTHER ORDERED affirming the judgments of guilt and sentences imposed by the West Phoenix Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the West Phoenix Justice Court for all further and future proceedings in this case.

³ 181 Ariz. at 487, 892 P.2d at 207.

⁴ Appellant's Opening Memorandum at page 3.